

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

1	IN THE MATTER OF	)	
	ACE GALVANIZING, INC.	)	
2		)	
	Appellant,	)	PCHB No. 502
3		)	
	vs.	)	FINAL FINDINGS OF FACT,
4		)	CONCLUSIONS OF LAW
	PUGET SOUND AIR POLLUTION	)	AND ORDER
5	CONTROL AGENCY,	)	
		)	
6	Respondent.	)	
		)	

---

8        THIS MATTER being an appeal of a \$100.00 civil penalty for an alleged  
9 smoke emission violation of respondent's Regulation I; having come on  
10 regularly for hearing before the Pollution Control Hearings Board on  
11 the 6th day of May, 1974, at Seattle, Washington; and appellant,  
12 Ace Galvanizing, Inc., appearing through its owner and president,  
13 David A. Breiwick, and respondent, Puget Sound Air Pollution Control  
14 Agency, appearing through its attorney, Keith D. McGoffin; and Board  
15 members present at the hearing being Walt Woodward, presiding officer  
16 and Mary Ellen McCaffree; and the Board having considered the sworn  
17 testimony, exhibits, records and files herein and having entered on  
18 the 15th day of May, 1974, its proposed Findings of Fact, Conclusions

1 of Law and Order, and the Board having served said proposed Findings,  
2 Conclusions and Order upon all parties herein by certified mail,  
3 return receipt requested and twenty days having elapsed from said  
4 service; and

5 The Board having received no excpetions to said proposed Findings,  
6 Conclusions and Order; and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order, dated the 15th day of  
10 May, 1974, and incorporated by this reference herein and attached hereto  
11 as Exhibit A, are adopted and hereby entered as the Board's Final Findings  
12 of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 11th day of June, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15  
16 Walt Woodward  
17 WALT WOODWARD, Chairman

18  
19 Mary Ellen McCaffree  
20 MARY ELLEN MCCAFFREE, Member

21  
22  
23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1

2

5

6

10

11

15

16

17

18

19

20

21

22

22

24

25

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ACE GALVANIZING, INC.

Appellant,

vs.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 502

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) in the Washington Commerce Building, Seattle, on May 6, 1974.

Appellant was represented by its owner and president, David A. Breiwick; respondent appeared through Keith D. McGoffin. Richard Reinertsen, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

1 From testimony heard and exhibits examined, the Pollution Control  
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On December 17, 1973, blue smoke or other particulant matter arose  
6 from the vicinity of or from the roof air vents of the facility owned  
7 by appellant at 429 S. 96th, Seattle, King County, for eight  
8 consecutive minutes of a shade equivalent to No. 3 on the Ringelmann  
9 Scale. An inspector on respondent's staff testified the smoke was  
10 emitted from the facility's roof air vents; appellant denied this and  
11 testified the emissions could have been caused by sandblasting being  
12 conducted that day by an adjacent industrial firm.

13 II.

14 Section 9.03 of respondent's Regulation I makes it unlawful to  
15 cause or allow for more than three minutes in any one-hour period a  
16 smoke emission of a shade darker than No. 2 on the Ringelmann Scale.  
17 Section 3.29 of Regulation I authorizes respondent to levy a civil  
18 penalty of not more than \$250 for any violation of Regulation I.

19 III.

20 Pursuant to the incident described in Finding of Fact I, respondent  
21 served appellant with Notice of Violation No. 9031, citing Section 9.03,  
22 and Notice of Civil Penalty No. 1322, in the sum of \$100, said penalty  
23 being the subject of this appeal.

24 IV.

25 An engineer on respondent's staff visited appellant's facility  
26 subsequent to December 17, 1973 and could find no explanation for the

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 reported smoke emission other than a supposition involving over-  
2 heating of a boiler, a supposition denied by appellant.

3 V.

4 Any Conclusion of Law hereinafter deemed to be a Finding of Fact  
5 herewith is adopted as same.

6 From these Findings, the Pollution Control Hearings Board comes to  
7 these

8 CONCLUSIONS

9 I.

10 There was a violation of Section 9.03 of respondent's Regulation I  
11 in the vicinity of appellant's facility as described in Finding of  
12 Fact I.

13 II.

14 In view of the conflicting testimony, the Board is unable to find  
15 that appellant was responsible for the violation.

16 III.

17 Any Finding of Fact herein which is deemed to be a Conclusion  
18 of Law herewith is adopted as same.

19 Therefore, the Pollution Control Hearings Board makes this

20 ORDER

21 The appeal is sustained and the civil penalty of \$100 assessed  
22 appellant is vacated.

23  
24  
25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 15<sup>th</sup> day of May, 1974.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 Mary Ellen McCaffree  
6 MARY ELLEN McCAFFREE, Member

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER